

When Recorded Return To:

## **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by [NAME], a Utah LLC, of the State of Utah ("Owner"), Salt Lake County, a body corporate and politic of the State of Utah ("County"), and the Utah Department of Environmental Quality ("DEQ") pursuant to Utah Code Ann., Sections 57-25-101 *et seq.*, for the purpose of subjecting the real Property described in paragraph 2 below to the activity and use limitations set forth herein. Owner, County and DEQ are sometimes jointly referred to hereinafter as the "Parties."

The Property includes the location of the former [DESCRIPTION OF PROPERTY] Superfund Site located at [ADDRESS] in Salt Lake City. The site was operated as a hazardous waste storage, treatment and petroleum recycling facility. Site operations were shut down in February 1988, after a notice of violation was issued by DEQ to the Petrochem Recycling Corporation. In November 1988, the U.S. Environmental Protection Agency's ("EPA") Region VIII Emergency Response Branch initiated an emergency surface removal action at the site. Following an assessment, the site was listed on the National Priorities List ("NPL") on October 14, 1992.

Following a remedial investigation and feasibility study, EPA selected a remedy for the site contained in a final Record of Decision ("ROD") dated September 27, 1996. An agreement in the form of a Consent Decree was negotiated to implement the remedy selected in the ROD (Docket No. CERCLA (106) VIII-98-05). The Consent Decree was entered on April 27, 1998 in the U.S. District Court for Utah. The remedial action, including building demolition, soil excavation and off site disposal, removal and disposal of surface storage tanks and drums, underground tank removals and off site disposal, excavation and off site incineration of recovered LNAPL, treatment and discharge of remediation derived water, and backfilling of excavations with clean soil was completed in compliance with the ROD and a final inspection was conducted on September 10, 2002. Hazardous substances above health-based levels were removed from the site. Confirmatory sampling verified that the site achieved the ROD cleanup objectives for soil and groundwater. The final site close out report determined that the site can be returned to an industrial type use. The site was subsequently deleted from the NPL effective June 30, 2003. A complete copy of the administrative record for the site is available for review at:

U.S. Environmental Protection Agency Region 8 Superfund Records Center  
1595 Wynkoop Street  
Denver, Colorado 80202

The Parties have determined that because some potentially contaminated subsurface soils may remain on site, the following Institutional Controls are appropriate.

NOW, THEREFORE, the Parties agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann., Sections 57-25-101 *et seq.*
2. Property. This Environmental Covenant concerns a seven acre parcel of real property located at [ADDRESS] in Salt Lake City, Salt Lake County, Utah, comprising parcel numbers: [PARCEL NUMBERS].
3. Former Owner. [NAME], the former owner of the property, abandoned the property in bankruptcy proceedings. Delinquent property taxes were not paid and the property went to a final tax sale on [DATE]. Owner, submitted a bid on the Property pursuant to Section 59-2-1351.1, Utah Code Ann., and received a tax deed from the County. Consistent with paragraph 6 herein, the obligations of the Owner are imposed on assigns and successors in interest, including any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees (“Transferee”).
4. Holder. Owner, whose address is [ADDRESS], is the “Holder” of this Environmental Covenant, as defined in Utah Code Ann., Section 57-25-102(6).
5. Activity and Use Limitations. As part of the removal action described in the administrative record, Owner hereby imposes and agrees to comply with the following activity and use limitations:
  - a. Land Use
    - i. The property is currently zoned “M2” by Salt Lake City for industrial use. Residual contamination may remain in the surface soil on the site but the levels are consistent with an industrial use. Elevated levels of subsurface contamination may exist.
    - ii All future uses of the property must, therefore, be consistent with uses allowed in an industrial zone. Any change in land use may require additional remediation.
  - b. Notification
    - i. Owner must notify DEQ of any excavation of and removal of subsurface contaminated soils.
  - c. Worker Health and Safety
    - i. Owner shall develop worker protection and site safety & health plans for the excavation and removal of subsurface contaminated soils.
  - d. Handling, Transport and Disposal
    - i. Excavated subsurface contaminated soils must be handled, transported and disposed of in accordance with plans reviewed by DEQ.
6. Running with the Land. This Environmental Covenant shall be binding upon the

Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code Ann., Section 57-25-105, subject to amendment or termination as set forth herein.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann., Section 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any Party shall not bar subsequent enforcement by such Party and shall not be deemed a waiver of the Party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ from exercising authority under applicable law.
8. Rights of Access. Owner hereby grants to DEQ, their respective agents, contractors, and employees, a right of access to the Property for implementation and enforcement of this Environmental Covenant.
9. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

The interest conveyed hereby is subject to an Environmental Covenant, dated , 20\_\_, recorded in the official records of the Salt Lake County Recorder on \_\_\_\_\_, 20\_\_, Entry No. \_\_\_\_\_, Book \_\_\_\_\_, Page \_\_\_\_\_. The Environmental Covenant contains the following activity and use limitations:

- a. Land Use
    - i. The Property is currently zoned "M2" by Salt Lake City for industrial use. Residual contamination may remain in the surface soil on the site but the levels are consistent with an industrial use. Elevated levels of subsurface contamination may exist at depths below fifteen (15) feet.
    - ii. All future uses of the Property must, therefore, be consistent with uses allowed in an industrial zone. Any change in land use may require additional remediation.
  - b. Worker Health and Safety
    - i. Owner shall develop worker protection and site safety & health plans approved by DEQ for the excavation and removal of subsurface contaminated soils.
  - c. Handling, Transport and Disposal
    - i.. Excavated subsurface contaminated soils must be handled, transported and disposed of in accordance with plans reviewed by DEQ.
  - d. Notification
    - i. Owner must notify DEQ of removal of subsurface contaminated soils.
10. Representations and Warranties. Owner hereby represents and warrants to the other

signatories hereto:

- a. That the Owner is the sole owner of the Property;
  - b. That the Owner holds legal title to the Property;
  - c. That the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
  - d. That the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
  - e. That this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.
11. Amendment or Termination. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by all of the following: The Owner or Transferee, County and DEQ, pursuant to Utah Code Ann., Section 57-25-110 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file and date-stamped copy for the recorded instrument to the County and DEQ.
12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.
14. Recordation. Within (30) days after the date of the final required signatures on this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office.
15. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder.
16. Distribution of Environmental Covenant. The Owner shall distribute a file and date-stamped copy of the recorded Environmental Covenant to DEQ and Salt Lake

County at the addresses listed herein below.

17. Notice. Unless otherwise notified in writing by Owner, County, or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

- a. County: Auditor's Office  
2001 South State Street, N-3300  
Salt Lake City, Utah 84190  
  
District Attorney's Office  
2001 South State Street, S-3600  
Salt Lake City, Utah 84190
- b. DEQ: [NAME]  
Utah Dept. of Environmental Quality  
Division of Environmental Response & Remediation  
168 North 1950 West  
Box 144840  
Salt Lake City, Utah 84114-4840
- c. Owner: [NAME]  
[ADDRESS]  
Salt Lake City, Utah 84116

The undersigned representatives of the Parties represent and certify that he or she is authorized to execute this Environmental Covenant.

\_\_\_\_\_  
[NAME], Its President

STATE OF UTAH                    )  
  : ss.  
County of Salt Lake            )

Before me, a notary public, in and for Salt Lake County, State of Utah, personally appeared before me \_\_\_\_\_, who after being sworn, duly acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County, Utah

[SEAL]

SALT LAKE COUNTY

By: \_\_\_\_\_  
[NAME] or Designee

STATE OF UTAH     )  
                              : ss.  
County of Salt Lake    )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me  
\_\_\_\_\_, who being by me duly sworn did say, that s/he is the  
\_\_\_\_\_ of Salt Lake County, Office of Mayor, and that said  
instrument was signed in behalf of Salt Lake County, by authority of law.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County, Utah

[SEAL]

UTAH DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By: \_\_\_\_\_  
[NAME], Director  
Utah Dept. of Environmental  
Quality Division of Environmental  
Response & Remediation

STATE OF UTAH     )  
                              : ss.  
County of Salt Lake    )

Before me, a notary public, in and for Salt Lake County, State of Utah, personally  
appeared before me [NAME], Director, Utah Department of Environmental Quality, Division of  
Environmental Response and Remediation, who after being sworn, duly acknowledged to me  
that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official Seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_

[SEAL]